IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.3631 of 2005.
Date of Decision: September 22 ,2006.

M/s Passi Printing Press

....**Petitioner**

through
Mr. Arun Jain, Advocate

Versus

Chander Mohan Sahdev & Anr.

...**Respondents**
through
Mr. V.K.Jain, Senior Advocate with
Ms. Divya Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.

This revision petition has been preferred by the tenant against whom an ejectment petition under Section 13 of the East Punjab Urban Rent Registration Act, 1949, as applicable to Union Territory, Chandigarh, was dismissed by the Rent Controller but, on an appeal, has been accepted by the Appellate Authority vide the impugned judgment dated 7th June, 2005 and it has been ordered to be evicted from the demised premises.

[2]. Respondent No.1 is owner and landlord of property bearing No.11, Sector 19-A, Chandigarh which is admittedly a residential building. As per the site plan sanctioned by the Estate Officer, U.T., Chandigarh, in respect of the aforesaid house, which consists of three storeyes, i.e., ground

floor, first floor and Barsati portion, a garage has also been constructed on the ground floor. The predecessor-in-interest of the respondent-landlord rented out the said garage portion to the petitioner for a period of eleven months w.e.f. 1st October, 1968 @ Rs.120/- per month excluding electricity charges. Undisputedly, the petitioner has installed a Printing Press in the aforesaid garage from the very inception of the tenancy. It also appears that in the year 1975, some additional construction over a small portion, i.e., Miani portion, adjoining to the said garage was made and the petitioner-tenant was allowed to use the same upon increase in the monthly rent from Rs.120/- to Rs.150/-. Alleging that he is working as an Engineer with a multi-national Company and requires the garage to park his car as well as for the parking of the scooters of his children and, thus, there is *bona-fide* personal necessity for the garage in question, the respondent-landlord filed this eviction petition on 2nd January, 1997. He also took an additional ground that since the Printing Press was installed in the back portion of the garage, the running thereof is causing great nuisance and a lot of disturbance to the studies of his children, apart from it being a constant source of noise pollution.

[3]. The petitioner-tenant contested the eviction petition taking the main preliminary objection that it was barred by *res-judicata*. On merits, it was denied for want of knowledge that the respondent had become absolute owner of the house in question. It was averred that the eviction petition has been filed with a view to pressurize the tenant to increase the rent. It was denied that because of misuse of the garage for commercial/business purposes, namely, due to installation of a Printing Press, any action could be taken by the Estate Officer, U.T., Chandigarh or that running of the Printing

Press was any source of nuisance to the landlord. Refuting the plea of *bona-fide* personal necessity, the petitioner took up the plea that substantial part of the premises was rented out to different tenants for `commercial activities' and the respondent does not require the garage at all as there is enough space in the house to park the car, if any.

[4]. On the basis of pleadings of the parties, the Rent Controller framed the following issues:-

> "1. Whether the petitioner requires the demised premises for his personal use and occupation?OPP
> 2. Whether the respondent No.1 is misusing the demised premises, thus, violating the rules and instructions of Chandigarh Administration, if so, its effect?OPP
> 3. Whether respondent No.1 is causing noise pollution in the locality, if so its effect?OPP
> 4. Whether the tender made by the respondent is legal and valid?OPR.
> 5. Whether the instant petition is not maintainable in the present form?OPR.
> 6. Whether the petitioner has got no locus standi to file the present petition?OPR.
> 7. Relief".

[5]. Under Issue No.1, the Rent Controller held that the landlord failed to produce the `registration certificates' of motor cycle of his son or Kinetic Honda scooter of his daughter and since he does not own any car, the garage portion is not required by him. Issue No.2 was also decided against the respondent-landlord holding that since he has failed to produce on record as to which rules/instructions of the Chandigarh Administration are violated by `change of user'. Similarly, Issue No. 4 too was decided against the respondent-landlord and as a result thereof, the eviction petition

was dismissed.

[6]. On an appeal, learned District Judge-cum-Appellate Authority, Chandigarh, vide its impugned judgment dated 7th June, 2005, has held that since the tenanted premises, i.e., the garage is an integral part of the residential premises, though rented out for a `non-residential purpose', the same continued to remain a residential building only, therefore, eviction of the tenant on the ground of personal necessity could be sought by the respondent-landlord. As regards to the *bona-fide* requirement, learned Appellate Authority has held that the previous judgment dated 2nd May, 1979 (Annexure P-1) passed by the then Appellate Authority, Chandigarh whereby the plea of *bona-fide* necessity of the predecessor-in-interest of the respondent-landlord was rejected, does not constitute *res-judicata* and in the changed circumstances, the landlord is entitled to seek eviction of the petitioner on that ground. The Appellate Authority has further observed that in 1968 when the respondent's father had let out the premises, he had no vehicle, car or scooter, but with the passage of time, not only that the respondent-landlord owns a car, but his son has got a motor cycle and the daughter has got a Kinetic Honda scooter, therefore, the landlord has been able to make out a case that the premises is required by him for his own use and occupation for parking of these vehicles. Consequently, the Appellate Authority accepted the appeal of the landlord and allowed the eviction petition.

[7]. Aggrieved, the petitioner-tenant has preferred this revision petition.

[8]. I have heard learned counsel for the parties at length and have perused the judgments passed by the Courts below.

[9]. Two fold contentions have been raised by Shri Arun Jain, learned counsel for the petitioner. Firstly, it was argued that in the earlier ejectment petition filed by the predecessor-in-interest of the respondent-landlord, the Appellate Authority vide its judgment dated 2nd May, 1979, a copy of which has been appended as Annexure P-1 with this revision petition, had categorically held that the rented premises, i.e., the garage, having been rented out for non-residential purposes, "is to be treated as a non-residential building". Similarly, vide the said judgment *bona-fide* requirement of the then landlady for the rented premises, was turned down holding that "the building to be a non-residential one, the landlord can not get the same vacated for personal necessity". According to Shri Arun Jain, the aforementioned judgment having attained finality, constitutes *res-judicata* between the parties. It is, thus, contended that the second ejectment petition for getting the premises vacated on the ground of personal necessity is not maintainable. Shri Jain then contended that since the premises has already been held to be a `non-residential building', it could be got vacated only if the landlord pleaded and proved that he needed the garage portion for his personal business/commercial activities, i.e., for his personal non-residential purpose. In other words, the landlord could not seek eviction from a `non-residential building' for `residential purposes'. In support of his contentions, Shri Jain placed reliance upon a Division Bench judgment of this Court in the case **Shri Mehtab Singh v Shri Tilak Raj Arora & Ors., 1988 HRR,99**, wherein it was held that a second application for ejectment of the tenant on a ground on which the earlier petition was got dismissed as withdrawn without liberty to file fresh petition, would be barred and not maintainable. He also relied upon the judgment of a learned

Single Judge of this Court in the case of **Smt. Biran v Gurmukh Singh, 1991(1) Rent Control Reporter, 95** holding that where the landlord's application for ejectment on the ground of bona-fide requirement was dismissed in default, second application on the same cause of action was not maintainable. He pressed into service yet another judgment of this Court in the case of **Parmeshwari Devi v Krishan Chander**, **2003 HRR, 197,** in which it has been held that the eviction of a tenant from a non-residential building on the ground of personal necessity is permissible only if the premises is required for a business or trade and the landlord has no other premises in his occupation to meet the said requirement. Shri Jain further relied upon a judgment of the Apex Court in the case of **Shabir Ahmad v Sham Lal, 2002(1) RCR,306** wherein a non-residential shop-cum-flat in Chandigarh was held to be a non-residential building.

[10]. Shri V.K.Jain, learned Senior Counsel, appearing on behalf of the respondent-landlord, on the other hand, contended that since the garage is a composite part of the property which is a `residential building', the case falls within the ambit of Section 13(3)(a)(i) of the 1949 Act under which a landlord can seek eviction of his tenant from a `residential' or `scheduled building' if he requires it “for his own occupation”. He further contended that Section 13(3)(a)(ii) of the Act which could be attracted only in the case of a `non-residential building' or `rented land', has no applicability in the present case. It was argued that the principal of *res-judicata* is totally banished for the reason that the judgment dated 2nd May, 1979 (Annexure P1) passed in the previous eviction petition filed by the predecessor-in-interest of the respondent-landlord, was exclusively based upon the prevailing misinterpretation of law by this Court holding that if a

`residential premises' was rented out for `non-residential purpose', the same was liable to be treated as a 'non-residential premises' and the landlord could not seek eviction of the tenant on the ground of his *bona-fide personal* necessity. However, later on a Full Bench of this Court in the case of S**hri Hari Mittal v Shri B.MSikka (1986-1) PLR, 1** held that "a residential building let out for non-residential purposes by the landlord without obtaining the written permission of the Rent Controller in terms of Section 11 of the Act, would continue to be a residential building and the landlord would be entitled to seek ejectment of the tenant on the ground of his ***bona-fide*** personal requirement". It was, thus, argued that in view of the later correct enunciation of law by a larger Bench of this Court, it is *cadit quaestio* and admits no further argument that the previous judgment dated 2nd May, 1979 (Annexure P-1) does not constitute *res-judicata*. To strengthen the contention, reliance was placed upon a judgment of the Hon'ble Supreme Court in the case of **Mathura Prasad Bajoo Jaiswal & Ors. V Dossibai N.B.Jeejeebhoy, 1970(1) SCC, 613,** in which it is held that where in subsequent proceedings between the same parties, "the question is purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resorting to the rule of *res-judicata*, a party affected by the decision will not be precluded from challenging the validity of that order for a rule of procedure can not supersede the law of the land". Learned counsel for the landlord also contended that eviction of the petitioner could not be sought on the ground that the garage portion is required by the landlord for `business or trade purposes' for the reason that any such mis-user shall entail resumption of the property, in as much as resumption proceedings have already been

initiated by the Chandigarh Administration on that count. It was strenuously argued by learned counsel for the landlord that the previous judgment dated 2nd May, 1979 (Annexure P-1) does not preclude the respondent-landlord from filing a second petition on the ground of *bona-fide* personal requirement as the eviction proceedings on the ground of (i) "*bona-fide* requirement", or (ii) "non-payment of rent", is a recurring cause of action as the genuineness of the plea is to be tested and decided by the Court on the basis of bona-fide personal necessity, if any, on the date of institution of the petition. In this regard, strong reliance was placed upon the judgment of the Apex Court in the case of **Suraj Mal v Radheshyam (1988) 3 SCC, 18** wherein their Lordships held that "the *bona-fide* need must be considered with reference to the time when a suit for eviction is filed and it can not be assumed that once the question of necessity is decided against the plaintiff, he will not have a bona-fide and genuine necessity in future. When the nature of requirement pleaded in the earlier suit was different from that in the present suit, the bar of res-judicata will not operate". Reliance has also been placed upon judgments of the Hon'ble Supreme Court in the case of **N.R.Narayan Swamy v B.Francis Jagan (2001) 6 SCC, 473** as well as in the case of **K.S.Sundararaju Chettiar v M.R.Ramachandra Naidu, 1994(5) SCC, 14**, wherein it was held that the cause of eviction under the Rent Control and Eviction laws is a recurring cause of action and even if the one cause is not found in the earlier proceedings, the same can be established by cogent evidence in the subsequent proceedings.

[11]. From the above cited case law relied upon by learned counsel for the parties, it appears well settled that if a `residential building' has been

rented out by the landlord for `non-residential purposes', it would not alter the nature of the premises and it shall continue to be a `residential building' for which the landlord can seek ejectment of the tenant on the ground of his *bona-fide* personal necessity. Legislative intentment is also unambiguous that in the case of a `residential' or `scheduled building', the landlord has to prove that the premises is required for his `personal occupation' whereas in the case of a `non-residential building' or `rented land', he has to prove that he needs the same "for his own use", i.e., for his own business or trade and he has no other premises in his occupation to meet that requirement. It is equally well settled that the ground of *"bona-fide personal requirement"* is a recurring cause of action and dismissal of an eviction petition of landlord at one point of time does not preclude him from filing a subsequent petition on the same ground and to prove that in the changed circumstances, he *bona-fidely* requires the premises. With all humility at my command, the view taken by a learned Single Judge of this Court in the case of **Smt. Biran (supra)** is *per-incuriam* being contrary to the well settled proposition of law elaborated by their Lordships of the Supreme Court in the cases of **Suraj Mal, K.S.Sundararaju Chettiar and N.R.Narayan Swamy (supra)**. Further, the Division Bench judgment of this Court in **Shri Mehtab Singh's case (supra)** is totally distinguishable for the reason that in that case the ejectment of the tenant was sought on the ground of "**sub-letting**" and in the subsequent petition also identical allegations were made. Obviously, the same issue having been earlier decided by the Court between the same parties, the previous judgment was bound to constitute *res-judicata* in the subsequent proceedings. In the case in hand, the plea of personal necessity of the landlord was not even decided on merits in the

previous eviction proceedings on the premise that such a ground was not available in respect of a `non-residential building'.

[12]. Adverting to the facts of the present case, it needs to be taken notice that the property bearing No.11, Sector 19-A, Chandigarh, is admittedly a residential premises. The garage portion also being an integral part of the said premises, was indeed constructed for the `residential purposes' only, namely, for the parking of the vehicles of those residing in the house.

[13]. True it is that the said garage portion was rented out for `non-residential purposes' by the predecessor-in-interest of the respondent-landlord in the year 1968 and since then is being used as such, however, the Court can not be oblivious of the changed circumstances, especially for the past more than 20 years when the flow of internationally renowned motor vehicle Companies has tremendously increased and `cars' have replaced the `carts' on Indian roads. The Union Territory of Chandigarh is no exception and the financial capabilities of its inhabitants for owning cars/two wheelers, is equally well known.

[14]. There is hardly a serious dispute that the respondent-landlord is an Engineer employed with a multi-national Company or that, in the year 1997 when he filed the ejectment petition, he did not have college going daughter/son. That being so, the capacity of the respondent-landlord to own a car or motor cycle/scooters for his children or their requirement for the garage to park such vehicles can not be doubted. It is equally well settled that the requirement for a premises has to be seen from the landlord's point of view unless his need lacks bona-fides. A part of the residential house, even if rented out to another tenant for non-residential purpose, is no ground

to doubt the *bona-fide* necessity of the respondent-landlord, more so when he is admittedly residing in the premises and his requirement for the garage is beyond doubt.

[15]. In view of the above discussion, I do not find any merit in this petition which is accordingly dismissed.

[16]. Having regard to the fact that the petitioner has been running the Printing Press in the disputed premises for a sufficient long period, it is directed that it will vacate the same on or before 31st December, 2006 subject, however, to its depositing the entire arrears of rent as well as advance rent upto 31st December, 2006 before the Rent Controller, Chandigarh, on or before 31st October, 2006.

[17]. The parties are left to bear their own costs.

September 22,2006. **(SURYA KANT)**
dinesh **JUDGE**